THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16498 OF 2007

DATED: 6-08-2007

Between :

Amujala Satyanarayana … Petitioner

And

The Commissioner of Endowments, Endowments Department, Hyderabad and another. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16498 OF 2007

ORDER :

This writ petition is filed seeking a declaration that the order of eviction passed by the 2nd respondent – Deputy Commissioner of Endowments dated 26-12-2006 in O.A.No.284 of 2000 as confirmed by the 1st respondent - Commissioner of Endowments in RP.No.20 of 2007 as arbitrary and illegal.

The petitioner herein claims to be the cultivating tenant of the land belonging to the 3rd respondent Temple to an extent of six (6) acres in RS.No.234 of Thimmapuram village, East Godavari District. It is stated that originally his mother was the lessee and after her death being the only legal heir, the petitioner has been continuing in possession and enjoyment of the land in question.

While so, on the basis of the proposals submitted by the Assistant Commissioner of Endowments, Rajahmundry under Section 83 of the A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short, 'the Act') alleging that the petitioner herein has been in occupation of the land in question unauthorisedly, OA.No.284 of 2000 was registered on the file of the 2nd respondent for eviction of the petitioner.

On behalf of the 3rd respondent temple, P.W.1 was examined and Exs.A-1 to A-9 documents were marked. Though P.W.1 was cross-examined by the writ petitioner, subsequently he failed to lead any evidence on his behalf in spite of several opportunities given. In

the circumstances, the 2nd respondent while treating that there is no evidence on the side of the respondent (writ petitioner herein), allowed O.A.No.284 of 2000 on 21-12-2005. At that stage, the writ petitioner filed an application to set aside the order of eviction and the 2nd respondent having entertained the same posted the matter to 26-12-2006. However, on that day both the writ petitioner as well as his counsel failed to appear. In the circumstances, the 2nd respondent having heard the Counsel for the temple and having considered the material available on record, recorded a finding that the respondent/writ petitioner was an encroacher since there was no valid lease in his favour. Accordingly, by order dated 26-12-2006 O.A.No.284 of 2000 was ordered directing removal of the encroachment and to hand over the vacant possession to the 3rd respondent temple.

Aggrieved by the said order, though the petitioner filed a Revision Petition before the 1st respondent – Commissioner of Endowments under Section 92 of the Act the same was also dismissed by order dated 23-6-2007 confirming the findings recorded by the 2nd respondent. Hence, this writ petition.

The learned Counsel for the petitioner contended that the order of eviction passed by the 2nd respondent, without hearing the petitioner, was arbitrary, illegal and in violation of the principles of natural justice. It is also contended that since the petitioner made an application to declare him as a small farmer and the same is pending before the Assistant Commissioner of Endowments, the order of eviction passed under Section 83 of the Act is arbitrary and unwarranted. Yet another contention raised is that the petitioner being the legal representative of the original lessee Chakrayamma is entitled to continue as a tenant and both the respondents 1 and 2 erred in declaring him as an encroacher.

It is to be noted that on appreciation of the material on record

both the respondents 1 and 2 recorded a finding that no lease deed has been executed by the temple in favour of the petitioner at any time and that the continuation of the petitioner without making any payments even for the use and occupation is unauthorized and illegal. The petitioner did not produce any material before the respondents 1 and 2 to contradict the specific plea that no lease has ever been executed by the 3rd respondent temple in favour of the petitioner. Even before this Court nothing has been produced by the petitioner to substantiate the plea that he is the cultivating tenant in respect of the land in question. May be that his deceased mother was a tenant, but in the absence of any statutory provision the petitioner cannot claim to have inherited the rights of tenancy. Even the plea of the petitioner that his petition for declaration as a landless poor person was pending before the Assistant Commissioner of Endowments was disbelieved by both the respondents 1 and 2 on the basis of a report received from the Office of the Assistant Commissioner of Endowments. At any rate, in the light of the findings recorded by the respondents 1 and 2 that the petitioner never held the leasehold rights in respect of the lands in question, he cannot claim the benefit of Section 82 (2) of the Act as a landless poor person.

Hence, the respondents 1 and 2 were justified in concluding that the petitioner was only an encroacher. The contention of the petitioner that the order of eviction was passed by the 2nd respondent without hearing the petitioner is also untenable since admittedly he failed to produce any evidence before the 2nd respondent in spite of several opportunities given.

For the aforesaid reasons, the writ petition is devoid of any merit and the orders impugned do not warrant interference by this Court.

The Writ Petition is accordingly dismissed. No costs.

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G. ROHINI, J.

Dt. 06-8-2007

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